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California Water Association

February 28, 2014

Mr. Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

SUBJECT: PROPOSED NPDES PERMIT FOR DISCHARGES FROM COMMUNITY WATER SYSTEMS

Dear Mr. Howard:

The California Water Association ("CWA") appreciates the opportunity to comment on the California State Water Resources Control Board's ("SWRCB" or "State Water Board") development of a multi-regional National Pollution Discharge Elimination System ("NPDES") permit to cover discharges from community water systems ("Multi-Regional Permit").

CWA represents the interests of approximately 115 investor-owned water utilities that are regulated by the California Public Utilities Commission and the California Department of Public Health ("CDPH"). These regulated water companies serve nearly 6 million Californians with safe, reliable, high-quality drinking water.

On behalf of our member companies, CWA is providing these comments on the process currently underway to manage discharges from community water systems. Our members support a workable regulatory process that would provide clarity and standardization of compliance practices across all public water systems ("PWSs"), whether operated by a municipality, a CPUC-regulated water utility, a private entity such as a mutual water company, or a special district.

Several CWA member companies have been actively engaged with their public agency counterparts in obtaining a clear regulatory framework for potable water discharges. Two CWA agencies have supported this effort, along with six publicly owned water agencies, by co-funding a permit writer to support the development of a permit for Region 2.

All of our member utilities, however, are deeply concerned about the inability of any community water system to comply with what is being proposed by the San Francisco Bay Regional Water Quality Control Board ("SFBRWQCB" or "Region 2") and the SWRCB.

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The implementation of a Multi-Regional Permit, as described in the Multi-Regional Permit Highlights Summary ("Highlights") presented by the SWRCB at the Oakland Stakeholders Workshop on January 24, 2014, would have a dramatic and deleterious impact on all of California's water utilities and agencies. The complexity of the proposed monitoring and reporting requirements far exceeds the operational capacity of CWA's member companies and their public agency counterparts. Further, compliance with the numeric limits being considered is neither technically practical nor economically feasible.

Preliminary calculations by the eight agencies and companies funding a Region 2 permit would require spending several million dollars per year without demonstrated benefits to water quality over and above the current Best Management Practices ("BMPs") that the utilities have employed for many years. As you may be aware, the issue of aging water infrastructure is a well-documented issue facing all community water providers. The projected compliance costs associated with the proposed discharge rules would be diverting desperately needed funds from other more critical infrastructure projects that are necessary to deliver safe and reliable drinking water to our customers.

While there are several implementation details to be discussed and negotiated, CWA respectfully requests that the State Water Board and its Regional Water Quality Control Boards consider these key issues as they move forward to develop a protective and practical permit that can be reasonably complied with by all permitees.

PROCESS AND STAKEHOLDER OUTREACH

To date, the permit development process has not engaged all stakeholders in a meaningful way. Workshops have not been adequately advertised, and outreach has not included proper notification to many of the affected potential permitees, especially those with smaller water districts whose staff and customers would be most affected by the outcome. There has been a significant amount of confusion among community water systems regarding individual regional permits and the nexus with a multi-regional permit being proposed by the SWRCB.

CWA would encourage the SWRCB to enhance outreach efforts to all affected stakeholders so that meaningful input may be provided by these water suppliers. In the past, the SWRCB has worked effectively with the drinking water community to develop statewide policies, such as the recycled water policy and we encourage the Board(s) to consider a similar approach.

DE MINIMIS DISCHARGES

Potable drinking water discharges have been readily recognized as a low threat across the state and throughout the nation and should therefore be regulated as such. Potable water discharges are scattered geographically within a distribution system and cannot be regulated in the same fashion as a wastewater effluent discharged by a Publicly Owned Treatment Works ("POTW").

Generally, potable water is treated and managed consistently across the industry with very little variability in the composition of the product. As you are aware, potable water suppliers in California are closely regulated by the CDPH with the goal of ensuring safe drinking water for the people they serve. Many of the activities undertaken by the agencies and utilities that result in discharges are required by the Safe Drinking Water Act regulations. Consequently, potable water discharges should be regulated in a fashion that takes into account the nature and reason for these discharges.

CWA recommends that the SWRCB and the RWQCBs work closely with the stakeholders in taking a risk management approach that clearly defines the various discharge categories and their associated requirements, based on the volume and risk potential of discharges that are codified in the federal Clean Water Act, as well as the California Code of Regulations, as de minimis discharges (refer to (CCR): TITLE 23. Division 3. Chapter 9. Waste Discharge Reports and Requirements Article 1. Fees Section 2200. Annual Fee Schedules).

In the same vein, a volume threshold for monitoring and reporting should be set to take into account that many discharges are so small that they are unlikely to have any unwarranted environmental impacts.

MS4 PERMIT COVERAGE

As you know, many Regional Water Quality Control Boards use Municipal Separate Storm Sewer System ("MS4") permits to regulate potable drinking water discharges to surface waters. MS4 permits allow municipalities to use the appropriate pollutant control measures, which give local governments flexibility. The pollution control measures used by local governments are more site-specific, which avoids the unwanted one-size-fits-all types of requirements normally associated with a general permit. When SWRCB staff reviewed this potable water discharge permitting issue in the past, they indicated that they were not aware of any particular problems under the current practices that would warrant a change in the regulatory regime.

To the extent water suppliers are covered by an MS4 permit (or low-threat, de minimis or other applicable NPDES permit), requirements related to their responsibilities for potable water discharges should be specified in their permits. They should not be required to obtain separate coverage under a multi-regional or statewide permit for potable water discharges. At a minimum, a multi-regional or statewide permit for potable water discharges should recognize alternative regulatory mechanisms, such as drinking water purveyor coverage under MS4 permits.

The LARWQCB currently has an unprecedented number of water utilities actively involved in working on solutions that both protect the environment and public health. This has resulted in a Los Angeles County MS4 General NPDES Permit that is the first permit specifically designed to address the issues of discharges from PWSs and to give MS4 Operators the tools they need to manage those discharges. CWA welcomes this development and urges the SWRCB to take advantage of this support and stakeholder involvement and allow the MS4 operators and PWSs of Los Angeles to pursue the current MS4 permit path.

PLANNED VERSUS UNPLANNED EVENTS

The Highlights indicated that the permit will effectively treat planned (i.e., reservoir cleaning projects) and unplanned (i.e. emergency main breaks) events in the same regulatory fashion by requiring similar monitoring and reporting for these two types of discharges. In reality, of course, the nature of these two types of discharges is markedly different. Planned discharges provide staff with adequate time to design an action plan for regulating and altering the discharges. On the other hand, unplanned discharges, such as a main break, require staff's immediate response to address public health and safety.

Once the unplanned discharge is controlled, the responding staff deploys best management practices (BMPs) to protect receiving waters. CWA, therefore, recommends that requirements related to unplanned discharges should not include numeric limits or action levels. Instead, they should include prescriptive BMPs designed to reduce adverse impacts to the maximum extent practicable.

NUMERIC LIMITS AND ACTION LEVELS

Per the Highlights document, it is understood by the stakeholders that the SWRCB and the SFBRWQCB (Region 2) are proposing numeric limits in their discharge permits, whereas the Central Valley Regional Water Quality Control Board (Region 5) is not and has instead opted for narrative BMP-based requirements. At the stakeholder workshop on January 24, 2014, State Water Board staff reported there was a different legal interpretation between the Region 2, the Region 5 and the SWRCB staff on whether numeric limits were in fact required for this type of permit.

While CWA members understand that all RWQCBs have discretionary authority to implement regulations in a manner that best suits their regional needs, the inconsistency in these determinations by Region 2 and Region 5 should be fully explained to the stakeholders because there is significant confusion about why the state's community water systems, which are very similar in their operational practices, may be potentially regulated in a significantly different manner, based solely on the Region in which they operate.

If numerical limits are indeed feasible, it is critical that these limits be implemented in a manner that takes into account the ability to obtain reliable and accurate field measurements. The SWRCB Multi-Regional Permit Highlights proposes a Total Chlorine Residual ("TCR") limit of 0.019 mg/L, without addressing how this limit was obtained and whether it is required. However, the SWRCB and the SFBRWQCB staff must take into account and acknowledge that the proposed effluent limitation of 0.019 mg/L cannot be measured accurately in the field using U.S. EPA-approved colorimetric methods.

The Multi-Regional Permit Highlights do propose a Minimum Level ("ML") of 0.05 mg/L for compliance purposes, but this ML was not established scientifically. In fact, it is well known that reliable low measurements in the field cannot routinely be achieved. A scientifically or empirically derived ML first must be established before numerical limits are determined to be feasible.

Regarding the proposed turbidity limit, the SWRCB and the SFBRWQCB should be aware that 50 Nephelometric Turbidity Units ("NTU") cannot be routinely complied with using BMPs applicable to unplanned discharges. The emergency nature of the responses to unplanned discharges, and the associated excavations necessary to access and repair lines, create turbid water that cannot be reduced to the less than 50 NTU standard when using industry-accepted BMPs. This scenario is not unlike a construction site where builders must reduce pollutants in their discharges to the Maximum Extent Practicable using BMPs. With unplanned discharges, a numeric action level may typically be exceeded. Thus, CWA proposes that prescriptive BMPs that are technically achievable and <u>not</u> cost-prohibitive be specified instead.

Regarding the pH limit range, the State Water Board and the SFBRWQCB should be aware that the pH in drinking water is routinely monitored and that it varies very little over time. Most drinking water distribution systems deliver water with a pH within the proposed limit of 6.5 to 8.5 units. Some utilities do serve potable water with low alkalinity and a pH above the 8.5 pH unit limit. However, the higher pH in these systems is necessary to prevent corrosion in the distribution systems, thereby reducing the number of leaks and main breaks, and to protect water quality by limiting the introduction of contaminants.

In all cases, there is little value in asking a water utility to conduct pH sampling and monitoring in the field for every discharge since the pH of the water to be discharged is already well known and documented. These data can be made readily available to the regulatory agencies without taking additional samples and measurements for each new discharge. In all cases, pH cannot be altered using available BMPs during planned and unplanned discharges from distribution systems. CWA proposes that pH only be reviewed and analyzed in situations where discharges are known to cause harm to the receiving water beneficial uses.

RECEIVING WATER MONITORING

The Highlights indicated that receiving waters should be monitored whenever numeric limits for chlorine, pH, and/or turbidity action levels are exceeded. In effect, this permit condition would require monitoring of receiving water for most unplanned discharges and many planned discharges, e.g., flushing. It should be noted that the largest utilities affected by this requirement most often discharge to storm conveyance systems where the discharged water typically travels for miles before entering a receiving water, thereby making it nearly impossible to determine when the planned or unplanned discharge is actually entering a receiving water.

In most situations, the location of the discharge into the receiving water is very difficult to establish. In addition, access to the receiving water in an urban environment is seldom practical or safe even under dry weather and daylight conditions. Further, there are no data available that show how frequently the impact on the receiving water from planned and unplanned discharges is detrimental to the receiving water quality.

CWA proposes that PWSs, in managing their potable water discharges, be required to conduct a visual survey of the receiving water for erosion, turbidity plumes, and fish kills when the volume threshold of the discharge exceeds 100,000 gallons, and when the discharge is within 300 feet of the receiving water. The volume and proximity of these discharges would represent conditions where a detrimental effect on the receiving water quality could potentially take place. This approach would be protective of the environment and would be less burdensome than having to monitor receiving waters whenever numeric limits or benchmarks are exceeded, without taking into consideration the type and location of the discharge, as the permit highlights suggest.

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CONCLUSION

CWA and its member companies appreciate the opportunity to provide comments on the effort to develop a permit for regulation of discharges from community water systems, and they look forward to continued discussions with the SWRCB and, particularly, the SFBRWQCB to develop a protective permit that establishes a workable regulatory framework for compliance. As dedicated stewards of public health and the environment, CWA's members have been using BMPs and are supportive of ensuring the uniform application of these BMPs to minimize the impact of the industry's operational needs and requirements and the costs imposed on drinking water customers.

Respectfully,

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